

**Contract No.: PROP -CS- FIRM4
Legal Specialist**

**FINAL REPORT
(Milestone 6)**

**Pacific Regional Oceanscape Program
Review of Fisheries Legislation and Policy**

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EXECUTIVE SUMMARY

Background

The Government of Kiribati, in cooperation with the World Bank, has committed to further enhancing effective management of Kiribati’s oceanic and coastal fisheries.

To this end the World Bank [WB] has funded a consultancy to enhance compliance measures for large-scale oceanic fisheries, diversification of sustainable marine-based sources of revenue for coastal communities, and strengthening seafood safety.

The lead agency for this project has been the Pacific Islands Regional Oceanscape Program (PROP) Project in the Ministry of Fisheries and Marine Research Development (MFMRD).

MFMRD is responsible for ensuring the legal operation of all fishing and fishing vessels flagged and licensed to Kiribati, including flag state responsibilities and the sustainable management and utilization of the country’s marine resources.

Both the WB and the MFMRD recognize that effective legislation and subsidiary regulation are critical both to the implementation of Kiribati’s offshore and coastal fisheries policies and plans. This has resulted in the approval of refined and enhanced legislation to ensure an effective legislative and regulatory framework.

As part of the consultancy the WB had also required that the MFMRD amend Kiribati’s fishing legislation to ensure that it is in compliance with Article 73 of the United Nations Convention on the Law of the Sea [UNCLOS].

A further requirement of the WB for the consultancy was to develop a Memorandum of Understanding (MOU) between the MFMRD and vessels fishing in Kiribati waters to create a mechanism that to facilitate electronic monitoring and reporting by means of on-board cameras. The World Bank has agreed to fund this initiative.

Lastly, the WB requested that the consultancy review the law around marine genetic resources including template contracts governing marine genetic resources to ensure that the template contracts adequately cover issues related intellectual property, traceability and benefit sharing.

Overview of Consultancy

The consultant reviewed the Acts, regulations and documents set out in Appendix 1 and developed a Gap Analysis, Appendix 2, that outlined the legislation and regulations that needed to be enacted in order to enhance Kiribati’s legislative and regulatory framework governing fishing.

Following this review the consultant drafted legislation to amend the Fisheries Act 2010, the Local Government Act 1984 and the Seabed Minerals Act 2017[see Appendix 3].

The consultant also drafted regulations to amend the Fisheries (Fish Aggregating Device Management) Regulations, the Domestic Fishing Zone Limit Regulations, the Fish Export Regulations 2012 made under the Fisheries Act 2010 (#6 of 2010), the Marine Zone (Declarations and Protocols) Regulations 2023 under the Marine Zone (Declaration) Act 2011 and the Sharks Sanctuary Regulations 2015 made under the Fisheries Act 2010 (#6 of 2010) [see Appendix 3].

New regulations were drafted to continue the various fisheries funds under the Fisheries Act (Fisheries Funds Regulations 2023) and to provide for electronic monitoring and electronic reporting by fishing vessels (Fisheries (Electronic Monitoring-Electronic Reporting) Regulations 2023)-[see Appendix 3].

This was followed up by a draft Cabinet Submission to promote the legislation and regulations to Cabinet and ultimately Parliament [see Appendix 4].

The review confirmed that present initiatives in regards to seafood safety were sufficient to enable Kiribati to meet both its international and domestic obligations.

The review also highlighted other matters that should be dealt with in the future in order to update the Ministry's oversight of Kiribati's marine resources i.e. Nauru Agreement, small scale fisheries development, National Fisheries Policies, Licensing conditions and other miscellaneous issues.

As part of the review the consultant engaged with key MFMRD and Project staff to ensure a full understanding of the assignment expectations and to get feedback and comments in order to complete the various drafts.

The draft MOU that was developed between the MFMRD and vessels fishing in Kiribati waters that governs the oversight of the electronic monitoring and reporting of fishing by means of on-board cameras is set out in Appendix 5.

Lastly the law around marine genetic resources was reviewed and the contract template governing the use of marine genetic resources was updated to ensure that it adequately covered issues related intellectual property, traceability and benefit sharing. [See Appendix 6]

Recommendations and comments in addition to draft legislation and regulations

Seafood Safety:

The consultant reviewed the following documents to determine whether Kiribati has put in place seafood safety standards to meet both international and domestic requirement to ensure safe handling of fish products for export and domestic consumption:

1. Seafood Safety and Toxicology, March 2020, World Bank Pacific Regional Oceanscape Program Project
2. Fish Export Regulations 2012 made under the Fisheries Act 2010 (#6 of 2010)
3. Fisheries (Processing, Export and Import) Regulations 2021
4. Food Regulations and Standards 2014
5. Kiribati Industry Standards under the Fisheries Act, version 6 June 2020.

The review also included reviews of similar food safety protocols in the Republic of the Marshall Islands and in Canada.

It was determined that no changes were necessary with respect to the law governing safety and sanitary requirements in relation to fish and fish products for export, i.e., Industry Standards under the Fish Export Regulations made under the Fisheries Act 2010. The Industry Standards are sufficient to meet the EU standards coupled with other requirements and official control activities.

It was also determined that no changes were necessary with respect to the law governing safety and sanitary requirements in relation to fish and fish products for the domestic market, i.e., Food Regulations and Standards made under the Food Safety Act 2006. This mandate lies with the Ministry of Health (MOH).

The March 2020 report by Andrew Wright [“Monitoring, Control and Surveillance (MCS) Gap Analysis and Needs Assessment: Kiribati Offshore and Coastal Fisheries”] questioned whether broader inspection and enforcement powers needed to be given to Authorized Officers (MFMRD), Food Inspectors (MOH) or Public Officers (local Councils) so as to encourage cross inspections of each other’s premises where fish products are handled.

It was determined that no change in the law is required for joint inspections between MFMRD, MHMS and Local Councils where the purpose is to train personnel and to create more awareness and enforcement of seafood safety issues. (This is referenced in s. 6.0 of the Seafood Safety and Toxicology Report).

At this point in time (subject to any future consultations between MFMRD, MHMS and Local Councils) there is no intention to expand the inspection and enforcement powers that are presently granted under the Fish Export Regulations, the Food Safety Act or the Local Government Act 1984. Any change to this approach will have to be negotiated between the MFMRD, the MHMS and Local Councils.

It is the understanding of the consultant that regulations for the MHMS are presently being drafted by the Attorney General to empower inspections for seafood that is sold locally. This would be within the jurisdiction of the MOH.

UNCLOS Article 73 changes to Fisheries Act 2010:

The 30 December, 2021 World Bank report by Martin Tsamenyi, [“Analysis of Compliance of Additional Documentation to Determine Kiribati Compliance with Article 73 of the United Nations Convention on the Law of the Sea (UNCLOS)”], determined that Kiribati was in contravention of Articles 73 (2) (3) and (4) of UNCLOS with respect to managing its Exclusive Economic Zone (EEZ).

Article 73 of UNCLOS reads as follows:

Article 73

Enforcement of laws and regulations of the coastal State

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

A review of the Fisheries Act determined that amendments to sections S. 29, 30, 40 and the addition of a new section 44A would be required to mitigate the non-compliance that presently existed in regards to article 73 of UNCLOS. [see Gap Analysis – Appendix 2 and amendments to the Fisheries Act – Appendix 3].

I have also reviewed a legal opinion of the Kiribati AG with respect Kiribati's compliance with Article 73 and agree that one could argue that article 73 (2) and (3) of UNCLOS have not been put into non-compliance by Kiribati law however I find the reasoning extremely convoluted. With all due respect to the opinion of the AG, I suggest that the simple amendments I have drafted to sections 29, 30 and 40 of the Fisheries Act would make it abundantly clear that Kiribati is in compliance with Articles 73 (2) and (3).

Since the issue of non-compliance is in respect of the Fisheries Act that is the place where the appearance of compliance should take place, not other statutes that are not directly related to fishing as suggested by the AG's opinion.

As for non-compliance with Article 73 (4), the AG is of the opinion that a legislative change is required to put Kiribati into compliance with that article. The new section 44A to the Fisheries Act that I have drafted will put Kiribati into compliance with Article 73 (4)

Nauru Agreement- Third Arrangement:

Article I of the Nauru Agreement requires that some further action to be taken by signatories to the Agreement. The consultant questioned as to whether these actions had in fact taken place.

In relation to "Catch Retention", the Agreement requires procedures to be adopted in order to implement this article including reporting. It was noted that the Port State and Transshipment Regulation and the Purse Seine Vessel Day Scheme Regulation 2014 combine to cover the required actions in regards to catch retention.

In relation to "FAD Closure" (i.e. deployment and servicing of Fish Aggregating Devices, etc.) it was questioned as to whether there were any exclusions with respect to closure or arrangements under a Management Plan with respect to domestic vessels and whether appropriate arrangements have been set out to meet the requirements of domestic vessels. It was noted that nothing further is required to be done in this regard as the appropriate arrangements are in place. FAD closure is enforced in July, August, and September. This is when foreign vessels cannot fish, it is only for domestic vessels. [see Fisheries (Fish Aggregating Device Management) Regulations 2014 made under the Fisheries Act 2010 (#6 of 2010)].

Tuna Management Plan(TMP):

A review of the various sections of the TMP determined that all of the provisions of the TMP are backed up by legislative or regulatory provisions except the provisions set out in section 63 with respect to requirements relating to the flagging of foreign fishing vessels.

A new regulation was subsequently drafted to require that a foreign vessel, as a condition of applying to be registered as a flag vessel under the Kiribati National Register of Licensed Fishing Vessels ensure,

- (a) that it demonstrably meets the eligibility criteria sets by the Director of Fisheries in consultation with the Minister; and
- (b) that it meets the eligibility criteria for access and flag agreement set out under the FSM Arrangement established by the Pacific Islands Forum Fisheries Agency.

The Tuna Management Plan also refers to 5 different funds i.e., the Fisheries Management Fund, the Fisheries Observer Fund, the Fisheries Monitoring fund, the Artisanal Fisheries Fund and the Vessel Monitoring System Fund. All of these funds appear to require that contributions must be made into the fund, however there does not appear to be any legislative provisions establishing these funds which are currently in operation.

Therefore a regulation has been drafted under the Fisheries Act 2010 that continues these funds, sets out the purpose for which the funds are to be used and that describes how and when payments are to be made [see Appendix 3].

Small Scale Fisheries Development:

The 2020 report by Peter Watt [“Small Scale Fisheries Development, Kiribati”] suggests that a review should be conducted of the national coastal fisheries licensing and permit system to evaluate effectiveness in managing fish resources. However a review at this time may be premature as the Fisheries (Conservation and Management of Coastal Marine Resources) Regulations 2019 made under the Fisheries Act 2010 only came into force in October of 2019. It will take some time to see how effective the regulation has been.

Another area that requires study is the possibility of establishing a licensing and registering system for sport fishing guides. This will require some research to determine what should be the qualifications and other requirements before a license or registration is issued. (Perhaps SPC or AusAid could sponsor such a study)

Electronic Monitoring and Electronic Reporting Systems and emerging technologies

The TOR for this project requires the preparation of draft legislation or regulations to support the implementation of electronic monitoring and reporting systems and to support the implementation of other identifiable emerging technologies.

Legislation to support the implementation of electronic monitoring and electronic reporting systems and new emerging technologies is contained in the new section 45 of the Fisheries Act. This section provides for the adoption of any code, standard, guideline

or procedure and for compliance with the code, standard, guideline or procedure as adopted. This would include a code, standard or guideline with respect to an electronic monitoring or reporting system [EM/ER]. The procedure could include the signing of an MOU with respect to such EM/ER.

The section is also broad enough to include regulations governing any new emerging technology.

An MOU has been drafted to support EM/ER by cameras installed on fishing vessels. [see the next section of this report]

For the time being (likely the next year or so) the cost of implementing a camera EM/ER system as a trial project on about 50 vessels will be borne by the WB.

Memorandum of Understanding [MOU]:

The WB together with MFMRD is interested in maintaining a viable fishing industry in the EEZ of Kiribati and elsewhere in the Pacific.

The WB is of the view that monitoring fishing activities in the EEZ of Kiribati will assist in maintaining a viable fishing stock in the EEZ of Kiribati and elsewhere in the Pacific.

An MOU has been drafted between MFMRD and longline vessels and purse seine vessels to require these vessels to install on-board cameras and associated equipment to monitor the everyday activities on board the vessels, including setting and hauling with the goal of making this a condition of licensing under the Fisheries Act 2010. The cameras will be in operation 24/7 and monitored by Monitoring, Control and Surveillance (MCS) officers. [see Appendix 5]

These cameras will record every activity on board the vessels for a certain number of trips and upon completion of a trip, when they return back to port in Kiribati, the hard drives will be checked and collected by MFMRD staff and replaced with new ones.

The MOU will cover such matters as to when a vessel must be in port for installation and maintenance and how hard drives are to be handled.

The MOU does not apply to Vessel Monitoring Systems (VMS), the Fishery Information Management System (FIMS) or the Tuna Fisheries Database Management System (TUFMAN) since these are already a condition of licensing.

Note: VMS determines the position of fishing vessels, FIMS reports on days (fishing effort) and TUFMAN reports on catch.

Because the WCPFC encourages initiatives that address data gaps and support the provision of data for scientific purposes, especially on long line vessels, this will create an incentive for vessels to add a camera monitoring system as part of their operation.

Once the MOU program is in place the entering into of an MOU could be linked to a future condition of getting and maintaining a licence or permit.

At present there do not appear to be any other examples of draft MOUs in the Pacific region to cover the installation of cameras as a tool to control EM/ER.

If it is determined that the signing of an MOU should be condition of getting and maintaining a licence for long line and purse seine vessels, a regulation has been drafted to support the MOU that requires the installation of onboard cameras. [See Appendix 3]

[Review of protocol re marine scientific research](#)

The MFMRD has requested that the protocol governing marine scientific research be officially enshrined into the law of Kiribati. In April 2021 the MFMRD drafted a protocol with the intention that it should form part of the law of Kiribati.

The question has arisen as to which Act should be the primary act that adopts the protocol, i.e. the Fisheries Act Am Act 2021, the Seabed Minerals Act 2017 or the Marine Zone Act 2011. The consultant advised that because the Seabed Minerals Act is broad in its scope i.e. it governs Kiribati's territorial sea, its EEZ and continental shelf and specifically deals with marine genetic research that it would be the logical Act to link to the protocol.

Because both the Fisheries Act and Marine Zone Act also have sections that deal with marine genetic research those 2 acts will adopt the protocol as referenced in the Seabed Minerals Act.

[Review of contracts re marine genetic research](#)

As part of the review of the law around marine genetic resources the consultant reviewed the template contracts governing marine genetic resources to ensure that the template contracts adequately cover issues related intellectual property, traceability and benefit sharing.

Note that benefit sharing is covered under section 10 of the template contract and intellectual property is covered under section 15 of the template.

In order to confirm the approach to traceability the consultant reviewed "Tracing Options for Marine Genetic Resources from within National Jurisdictions" by The Commonwealth, "Frontiers: Traceability Approaches for Marine Genetic Resources Under the Proposed Ocean (BBNJ)" and "Standard Material Transfer Agreement: International Treaty for Plant Genetic Material Resources for Food and Agriculture", issued by the World Intellectual Property Organization.

Both of the documents on tracing confirmed that there are numerous options for tracing marine genetic resources. The template for plant genetic resources was not helpful for

marine genetic resources as it was linked to a specific treaty dealing with plant genetic material only.

The MFMRD confirmed that they had reviewed 6 different options for tracability and decided for the time being to use the contract approach. As a result of the review the contract template was updated, especially in the area of traceability. [See Appendix 6]

Marine Zone (Declaration) Act:

It should be noted that the Gap Analysis suggests that the Marine Zone (Declaration) Act should be amended to add 3 new provisions. It has been pointed out by the Ministry that any amendment to the Act would require notification under the United Nations Convention on the Law of the Sea. This is a long process. As a result these amendments have been moved to the Regulations under the Act.

Licensing conditions:

There are several conditions that should be added to licences of longliners and purse seiners to reflect current fishing requirements throughout the Pacific:

1. Update the Licence Conditions of purse seiners and longliners to reflect new Conservation and Management Measures (CMMs) adopted at the 2018 meeting of the Commission, i.e. CMM 2018-01, 2018-03, 2018-05 and 2018-06.
2. Clarify that many CMMs referenced in the longline Schedule have no application to longliners.
3. Clarify that CMM 2013-03 relating to the deployment of Observers on vessels fishing north of 20°N, has no application to Kiribati-flag vessels.
4. Update the licence conditions to implement the provisions of the Kiribati 2014 Fish Aggregating Device (FAD) Management Plan, including with respect to paragraph 7 relating to the details required to establish and maintain a FAD Register.
5. Require logsheet catch and effort e-reports to be lodged directly from the vessels to MFMRD.

Other matters that are currently under development or discussion:

1. A licensing system from the Coastal Fisheries Division in relation to small-scale fishing vessels.
2. A review of the WCPFC Conservation and Management Measures (CMM 2017-02) in order to help control Illegal, unregulated and unreported fishing (IUU), [Note that the minimum standards for Port State Measures and WCPFC Conservation and Management and resolutions 21 February 2022 are currently in progress and the part that applies to Kiribati will likely be adopted in early 2023].

3. Review the Regional Port State Measures Framework (RPSMF) in order to help control Illegal, unregulated and unreported fishing (IUU)[Note that this is currently in progress and the part that applies to Kiribati will likely be adopted in early 2023].

National Fisheries Policy 2013-2025:

Some other legal issues that should be addressed in the future include the following:

- Development of Bonefish and sea cucumber legislation or regulations.
- Establishment of coastal and oceanic Stakeholder committees and mandates. [It is not clear if this can be done administratively or if this will require legislation.]

APPENDIX 1

Acts, Regulation, and Documents

ACTS:

1. Fisheries Act 2010 (#6 of 2010)
2. Fisheries (Amendment) Act 2015 (#1 of 2015)
3. Fisheries (Amendment Act) 2017 (#5 of 2017)
4. Fisheries (Amendment) Act 2021 (#22 of 2021)
5. Food Safety Act 2006
6. Local Government Act 1984
7. Local Government Amendment Act 2006
8. Marine Zone (Declaration) Act 2011 (#34 of 2011)
9. Seabed Minerals Act 2017

REGULATIONS:

1. Closing Lines Regulations 2014 made under the Marine Zone (Declaration) Act 2011 (#4 of 2011)
2. Contiguous Zone Outer Limits Regulations 2014 made under the Marine Zone (Declaration) Act 2011 (#4 of 2011)
3. Domestic Fishing Zone Limit Regulations 2015 made under the Fisheries Act 2010 (#6 of 2010)
4. Fisheries (Conservation and Management of Coastal Marine Resources) Regulations 2019 made under the Fisheries Act 2010 (#6 of 2010)
5. Fisheries (Fish Aggregating Device Management) Regulations 2014 made under the Fisheries Act 2010 (#6 of 2010)
6. Fisheries (Port State and Transhipment) Regulations 2020
7. Fisheries (Purse Seine Vessel Days Scheme) Regulations 2014 made under the Fisheries Act 2010 (#6 of 2010)
8. Fish Export Regulations 2012 made under the Fisheries Act 2010 (#6 of 2010)
9. Fisheries (Processing, Export and Import) Regulations 2021
10. Food Regulations and Standards 2014
11. Maritime (Small Craft) 2020
12. Phoenix Islands Protected Area (Amendment) Regulations 2017 made under the Environment Act 1999 as amended in 2007 (#1 of 2007)
13. Sharks Sanctuary Regulations 2015 made under the Fisheries Act 2010 (#6 of 2010)

DOCUMENTS:

1. Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization
2. Cabinet submission template

3. Conservation and Management Measure on Minimum Standards for Port State Measures, Western and Central Pacific Fisheries Commission, December 2017
4. Contract respecting Deep Sea Minerals and Genetic Resources Regional PSM Framework (RPSMF)(Agenda 9.1 adopted at FFC114 June 2020
5. Declaration on Preserving Maritime Zones in the face of Climate Change-related Sea-level Rise (6 August 2021 Pacific Islands Forum)
6. Draft 9.2 Regional Port State Measures Framework Infosheet v.1
7. Forum Fisheries Agency (FFA) Circular Ref: 09/16, Changes to FFA Vessel Monitoring System (VMS) Type Approval Procedure
8. Frontiers: Traceability Approaches for Marine Genetic Resources Under the Proposed Ocean (BBNJ)
9. Harmonized Minimum Terms and Conditions for Access by Fishing Vessels (amended by FFC110, May 2019)
10. Kiribati Industry Standards under the Fisheries Act, version 6 June 2020
11. Kiribati National Fisheries Policy 2013-2025
12. Kiribati Seafood Safety Verification Authority National Control Plan version 6 June 2020
13. Legal Opinion, Office of the Attorney General, Kiribati, “Kiribati’s Fisheries Laws – Compliance with Article 73 of UNCLOS”.
14. License Permit for Foreign Longline Vessel to operate in Kiribati EEZ
15. License Permit for Foreign Purse Seiner Vessel to operate in Kiribati EEZ
16. Monitoring, Control and Surveillance (MCS) Gap Analysis and Needs Assessment: Kiribati Offshore and Coastal Fisheries, Andrew Wright, March 2020
17. Protocol on Marine Scientific Research within the National Jurisdiction of Kiribati
18. Regional PSM Framework (RPSMF)(Agenda 9.1 adopted at FFC114 June 2020
19. Seafood Safety and Toxicology, March 2020, World Bank Pacific Regional Oceanscape Program Project
20. Small Scale Fisheries Development, Kiribati, Peter Watt, 2020
21. Standard Material Transfer Agreement: International Treaty for Plant Genetic Material Resources for Food and Agriculture, issued by the World Intellectual Property Organization
22. Third Arrangement: Parties to Nauru’s Agreement (PNA) Vessel Day Scheme (VDS)
23. Tracing Options for Marine Genetic Resources from within National Jurisdictions” by The Commonwealth
24. Tuna Management Plan 2014
25. UNCLOS Article 73
26. WCPFC Conservation and Management Measures (CMMs) and Resolutions of the WCPFC, February, 2022
27. World Bank Project Approval Document on Proposal Grant for Kiribati for Pacific Island Oceanscape Program, Feb. 20, 2020

28. World Bank Report, Analysis of Compliance of Additional Documentation to Determine Kiribati Compliance with Article 73 (2) of the United Nations Convention on the Law of the Sea (UNCLOS), Martin Tsamenyi, 30 Dec. 2021.

ACTS & REGULATIONS FROM OTHER JURISDICTIONS:

1. Food Premises Regulation made under the Health Protection and Promotion Act, Ontario, Canada
2. Republic of the Marshall Islands Industry Standards for fish and fishing products and Premises, version 1 March 25, 2020.
3. RMI Food Handling, Storage and Preparation.

APPENDIX 2

Gap Analysis

Introduction

The purpose of this gap analysis and legislative overview is twofold: The first objective is to Review the Fisheries Act 2010, as amended, together with regulations made under the Act to ensure it meets regional and international commitments and obligations including applicable Western and Central Pacific Fisheries Commission (WCPFC) Conservation and Management Measures (CMM's).

The second objective is to identify decisions that will have to be made in order to draft amendments to the Act and Regulations that address the various issues that have been highlighted in the many reports on Fisheries issues in Kiribati.

PART 1: GAP Analysis and Legislative Overview of Relevant sections of Fisheries Legislation and other relevant Statutes in Kiribati

The Tables below will help identify amendments that may be necessary to the particular statute or regulation.

1. Fisheries Act 2010 (#6 of 2010) including amendments from 2015, 2017 and 2021:

The Fisheries Act 2010 provides for the conservation, management and development of Kiribati fisheries and the control of foreign fishing. It also implements regional and international obligations from treaties to which Kiribati is party.

The Act also set out the objects of the Act and relegates the responsibility of fisheries to the Ministry of Fisheries and Marine Resources. The Act also requires the Director of Fisheries to prepare a management plan for each of the Designated Fisheries, as designated by the Minister under the Act.

The 2015 amendments promote the sustainable management of the fisheries of Kiribati and the development and use of fisheries resources for the benefit of Kiribati, including fees and administrative penalties that reflect the value of the resource and to protect fish stocks and the marine environment. In relation to exports, the 2015 amendments establish a Competent Authority to regulate, control, supervise and monitor fish processing establishments.

The purpose of the 2017 amendments is to support the long-term conservation, management and sustainable use of the marine living resources of Kiribati. In support of this objective, the Minister may, from time to time, determine the total allowable catch, total allowable effort, or both, for fisheries in Kiribati fisheries waters. The amendments also extend the definition of Director of Fisheries to include the Director of Coastal Fisheries, Director of Licensing and Compliance, and Director of Seafood Verification.

Section	Provision	Comments
7A	Treaties listed in the Schedule to have force of law in Kiribati	See note below under "Schedule" re Palau Arrangement.
7B	Minister to publish a list in the Gazette of international, regional and sub-regional organisations to which Kiribati is party or a cooperating non-contracting party. The Minister is also required to publish a list of all international conservation and management	CMM-2017-02 is part of a draft paper presently in progress.

	measures that apply in Kiribati, including in respect of those foreign fishing vessels registered or licensed to operate in Kiribati waters.	
12A	Marine Genetic Resource	Provide for contract to control MGR. Insert provision to provide for IP, benefit sharing and traceability system. Create legislative link to MSR protocol under Seabed Minerals Act 2017 re research on MGR.
29	Forfeiture of foreign vessel in contravention of the Act	Amend to bring section in line with Article 73 (2) of UNCLOS
30	Discretionary power given to Court to release vessel on payment of security or bond	Amend to bring section in line with Article 73 (2) of UNCLOS
40	Payment of administrative penalty	Amend to bring section in line with Article 73 (3) of UNCLOS
44A		Add provision with respect to notification to flag state in case of arrest or detention in order to bring section in line with Article 73 (4) of UNCLOS
45	Regulations	Add a provision to broaden regulation power to be either general or specific. Add a provision to broaden regulation power to apply to different classes differently. Add a provision that would permit the adoption by reference of a standard, code, guideline or procedure as amended from time to time. This could also be made to apply to matters that are published under s. 7B.
45A	Conflicts	Add a new section 45A that ensures where there is a conflict between a provision of the Fisheries Act or a regulation made under the Act that the provisions of the Fisheries Act and regulations prevail over any other Act or regulation. This is despite section 1 (5) which recognizes other laws.
Schedule	List of Treaties	Add Palau Arrangement to the list of treaties. After ratification, add FAO PSM Agreement to Schedule. [Note: this will assist in removing yellow card from EU] After ratification, add the 2012 Agreement on Strengthening Implementation of the 1992 Niue Treaty on Cooperation and Law Enforcement in the South Pacific Region (the NTSA). NOTE: Ratification will depend on whether

		the data sharing provisions of the NTSA do not contravene existing data confidentiality arrangements in Kiribati law (i.e., s. 39 of the Fisheries Act). This is to be reviewed by MFMRD.
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2. Marine Zone (Declaration) Act 2011 (#34 of 2011):

The Marine Zone (Declaration) Act sets out the baselines for Kiribati, internal waters, the archipelagic waters, the contiguous zone, the territorial sea, the exclusive economic zone, and the continental shelf.

Section	Provision	Comments
New 3A	Add to Part I	Adopt the Pacific Islands Forum Leaders “Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise” dated 6 August 2021 as part of the law of Kiribati.
New 3B	Add to Part II	Add provision that all marine spatial planning under the Act to be carried out by the Geoscience Division of the MFMRD.
14 (b)	Regulations	Create legislative link to MSR protocol under Seabed Minerals Act 2017 re scientific research in the EEZ of Kiribati..

3. Local Government Act 1984:

The Local Government Act 1984, provides that Local Island Councils can, among other things, by by-laws regulate the management of their adjacent waters extending out to three nautical miles, including fishery activities.

Section	Provision	Comments
2 (iv)	Interpretation - Definition of “waters adjacent”	Amend the definition such that it makes it clear that “extending 3 NM seaward” means “extending 3 NM seaward from the High Water Mark”.

4. Seabed Minerals Act 2017:

The Seabed Minerals Act 2017, provides for the sustainable management of Kiribati’s seabed minerals and the regulation of prospecting, exploration and mining activities.

Section	Provision	Comments
New 98A	Adoption of MSR protocol	All marine scientific research approved under Part IX must meet the requirements of the MSR protocol.

5. Closing Lines Regulations 2014 made under the Marine Zone (Declaration) Act 2011 (#4 of 2011):

The Closing Lines Regulations 2014, define internal waters as all waters on the landward side of the territorial sea or any closing lines to the extent the closing lines are outside the archipelagic baselines.

Section	Provision	Comments
		No amendments necessary.

6. Contiguous Zone Outer Limits Regulations 2014 made under the Marine Zone (Declaration) Act 2011 (#4 of 2011)

Under the Marine Zones (Declaration) Act 2011, the Minister for MFMRD declared a "Contiguous Zone" to mean waters beyond the territorial sea within a distance of twenty-four (24) nautical miles from the baselines from which the breadth of the territorial sea is measured. The regulations set out the various contiguous zones in Kiribati.

Section	Provision	Comments
		No amendments necessary.

7. Domestic Fishing Zone Limit Regulations 2015 made under the Fisheries Act 2010 (#6 of 2010)

Under the Fisheries Act 2010 the Minister may declare "domestic fishing zones". The Regulations set out the various domestic fishing zone limits in Kiribati.

Section	Provision	Comments
11	Fishing in Domestic Fishing Zone	Prohibit foreign fishing vessels from entering the DFZ to fish.

8. Fisheries (Conservation and Management of Coastal Marine Resources) Regulations 2019 made under the Fisheries Act 2010 (#6 of 2010):

The purpose of the Regulations is to:

- conserve, manage and protect coastal marine resources to ensure their sustainable utilization for the benefit of I-Kiribati people;
- state out conservation and management measures to sustain the marine resources covered under these Regulations;
- enable the inclusivity of the community in fisheries management through recognising and enforcing community-based fisheries management plans; and
- promote data collection through the establishment of a record of licensed fishing vessels and reporting obligations to enhance the ability to conserve and manage such marine resources.

Section	Provision	Comments
		Any conflict of interest between this Act and the Fisheries Act will be covered under the new proposed s. 45A of Fisheries Act.

9. Fisheries (Fish Aggregating Device Management) Regulations 2014 made under the Fisheries Act 2010 (#6 of 2010)

The Regulation establishes a Register of FADs by the Director of Fisheries and an associated registration fee and requires the operator of a licensed purse seiner to maintain a FAD log with details of the FAD including deployment details and location coordinates by date.

The Regulations also provide for the Director of Fisheries to prepare a FAD Management Plan. The Regulations can also prohibit the deployment and servicing of FADs for prescribed periods.

Section	Provision	Comments
New 3A	References that Act applies to purse seine fishery (i.e. commercial tuna)	Expand Regulation to apply to small scale coastal fishing operations.

10. Fisheries (Purse Seine Vessel Days Scheme) Regulations 2014 made under the Fisheries Act 2010 (#6 of 2010)

The Regulations define, inter alia, electronic equipment, fishing days and non-fishing days, which include references to the use of electronic equipment in support of fishing and stowage of fishing gear, vessel monitoring system and vessel monitoring system information. The Regulation also provides for the operation of a vessel monitoring system, the ownership of vessel monitoring system information, which is vested in the State, and requires activities claimed to be associated with non-fishing days to be verified by on-board human observers.

Section	Provision	Comments
		No amendments necessary.

11. Fish Export Regulations 2012 made under the Fisheries Act 2010 (#6 of 2010)

The Regulations apply to fish intended for export for human consumption that are processed in Kiribati, including fish landed by Kiribati flagged vessels in a foreign port. The Regulations also establish the Competent Authority, the Kiribati Seafood Verification Agency, which is responsible to the Director of Fisheries, or his or her designate.

The objectives of the Agency include:

- a. conducting the verifying and certifying of the export of seafood;
- b. ensuring the application of appropriate quality control measures and seafood production industry standards;
- c. ensuring the facilitation of exports from Kiribati of all categories of seafood for human consumption; and
- d. setting standards and certifying and licensing fish processing establishments.

Section	Provision	Comments
31	New Part XI -Repeal	Repeal the Fisheries Processing and Export Regulations 1981

12. Food Regulations and Standards 2014

The Regulations govern all stages of production, processing and distribution of food including the the import and export of foods but does not apply to the domestic preparation, handling, storage, holding or possession of food for private domestic consumption.

The purpose of the regulations is to protect the health of the public from unsafe food, and to protect consumers from deception and food of unacceptable and poor quality.

Section	Provision	Comments
		No amendments necessary.

13. Phoenix Islands Protected Area (Amendment) Regulations 2017 made under the Environment Act 1999 as amended in 2007 (#1 of 2007)

The Phoenix Islands Protected Area (PIPA) is among the largest designated Marine Protected Areas in the world.

The Government of Kiribati is responsible for the development of the PIPA Management Plan under the Environment Act 1999. The PIPA Regulations define the ‘protected area’ to which the PIPA Management Plan applies.

Section	Provision	Comments
		No amendments necessary.

14. Sharks Sanctuary Regulations 2015 made under the Fisheries Act 2010 (#6 of 2010)

The objectives of the Shark Sanctuary Regulations 2015, are:

- a. to establish a shark sanctuary in Kiribati waters to ensure the conservation of sharks,
- b. to protect the balance of the marine ecosystem, including commercially important fish species, and the health of marine habitats including coral reefs,
- c. to help sustain and develop Kiribati’s economy from shark and marine-related ecotourism, and
- d. to further enhance the conservation reputation of Kiribati by joining other countries in the region in adopting measures to protect sharks.

Section	Provision	Comments
8 (3)	<p>Certain actions are not an offence</p> <p>Wire trace prohibited</p> <p>7 (1) A fishing vessel in the Kiribati Shark Sanctuary must not have on board wire trace.</p>	Clarify this provision: s. 8 (3) “Regulation 7 (1) does not apply to a foreign fishing vessel that has entered Kiribati fisheries waters for a purpose recognised by the United Nations Convention on the Law of the Sea” where the vessel has been issued a permit exempting them from s 7(1).

15. Tuna Management Plan 2019

Section	Provision	Comments
		Management Plans are required for ‘designated fisheries’ under the Fisheries Act. Designate tuna as a designated fishery under the Fisheries Act 2010?
		Note that it is not clear if the TMP proposes concrete management actions with clear benchmarks, objectives and principles as provided for in Article 5 of United Nations Fish Stocks Agreement (UNFSA)?

APPENDIX 3

Drafted Acts and Regulations

An Act

entitled

AN ACT TO AMEND THE FISHERIES ACT 2010

Commencement:

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

1. Short title and commencement

This Act may be cited as the Fisheries (Amendment) Act 2022 and shall commence on such date as the Minister may by notice appoint.

2. Meaning of 'principal Act'

In this Act principal Act means the Fisheries Act 2010 as amended.

3. Amendment of Section 12A

Clause 12 A (3) (c) to the Principal Act is repealed and the following substituted:

(c) the applicant entering into a contract with the Ministry of Fisheries and Marine Resources Development that sets out the obligations of the applicant to the Ministry as determined by the Director of Fisheries with the approval of the Minister. and that includes provisions with respect to benefit sharing, traceability and intellectual property rights.

4. Amendment of Section 12A

Section 12A to the Principal Act is amended by inserting the following subsection:

(5) Scientific research conducted pursuant to a licence or authorization issued under this section shall be conducted in accordance with the “Protocol on Marine Scientific Research” adopted under the Seabed Minerals Act 2017.

5. Amendment of Section 29

Section 29 to the Principal Act is amended by inserting the following subsection:

(6) A conviction of an offence under this section shall not include imprisonment or any form of corporal punishment.

6. Amendment of Section 30

Section 30 to the Principal Act is amended by inserting the following subsection:

(4) Where a bond or other security has been paid under this section, the vessel and its crew that was seized under this section, shall be promptly released.

7. Amendment of Section 40

Section 40 to the Principal Act is amended by inserting the following subsection:

(3) Where the Minister agrees to accept payment of an administrative penalty under this section, all crew members of the foreign vessel and the vessel shall be released when the payment is made, or where there is no evidence that the payment has been made within 48 hours of agreeing to accept payment of the administrative penalty, released forthwith after the 48-hour period has expired.

8. Insertion of a new Section 44A

The Principal Act is amended by inserting a new Section 44A as follows:

44A. Where a foreign vessel has been detained or its crew arrested under this Act, the Minister shall promptly cause the flag state of the vessel and crew to be notified of the detention or arrest and of any penalties imposed.

9. Amendment of Section 45

Section 45 to the Principal Act is amended by inserting the following subsections:

General or specific application

(3) A regulation made under this Act may be of general application or specific to any person or persons or class or classes in its application.

Classes

(4) A class described in the regulations made under this Act may be described according to any characteristic or combination of characteristics and may be described to include or exclude any specified member, whether or not with the same characteristics.

Idem

(5) A regulation may prescribe different procedures for different classes of information.

Codes

(6) A regulation may adopt in whole or in part and with such changes as the Minister considers necessary, any treaty, protocol, code, standard, guideline or procedure and require compliance with the thing as adopted.

Rolling incorporation

(7) If a regulation under subsection (6) so provides, a treaty, protocol, code, standard, guideline or procedure adopted by reference shall be a reference to it, as amended from time to time, and whether the amendment was made before or after the regulation was adopted.

Regulations respecting administrative penalties

(8) Where an administrative penalty is prescribed under this Act or a regulation made under this Act, the prescription may set out specific amounts of administrative penalties or provide that the amounts of administrative penalties be based on the type of the contravention in question, on the contravention history of the person required to pay the administrative penalty or on whether the person is or is not a natural person.

(9) Subsections (3) to (7) apply, with necessary modifications, to an international conservation and management measure that is adopted by way of publication under Section 7B.

10. Insertion of a new Section 45A

The Principal Act is amended by inserting a new Section 45A as follows:

Conflicts

45A. Despite Section 1 (5), where there is a conflict between a provision of this Act, or a regulation made under this Act, and a provision of another Act or regulation, the provisions of this Act, or a regulation made under this Act, prevail over any other Act or regulation.

11. Amendment of the Schedule

The Schedule to the Principal Act is amended by inserting the following scheduled treaties:

The Palau Arrangement for the Management of the Western Pacific Fishery, as amended

If ratified by Kiribati, the 2012 Agreement on Strengthening Implementation of the 1992 Niue Treaty on Cooperation and Law Enforcement in the South Pacific Region

If ratified by Kiribati, the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

If ratified by Kiribati, the Conservation and Management Measure on Minimum Standards for Port State Measures of the Western and Central Fisheries Commission, 2017-02.

FISHERIES (AMENDMENT) ACT 2022

EXPLANATORY MEMORANDUM

This Act amends the Fisheries Act 2010 as amended subsequently by the Fisheries (Amendment) Act 2015, 2017 and 2021. The amendments implement assorted legal fisheries issues identified by consultants over the past several years. The amendments also bring the Act into compliance with Article 73 of the United Nations Convention on the Law of the Sea [UNCLOS].

Clause 12 A (3) (c) is amended to ensure that the contract that is entered into to control marine genetic research contains provisions that address benefit sharing, traceability and intellectual property rights.

The new Subsection 12A (5) ensures that marine scientific research is carried out in accordance with the “Protocol on Marine Scientific Research” adopted under the Seabed Minerals Act 2017.

The amendment to section 29 brings the Act into compliance with Article 73 (3) of the United Nations Law of the Sea.

The amendment to section 30 brings the Act into compliance with Article 73 (2) of the United Nations Law of the Sea.

The amendment to section 40 brings the Act into compliance with Article 73 (2) of the United Nations Law of the Sea.

The new Section 44A brings the Act into compliance with Article 73 (4) of the United Nations Law of the Sea.

The amendments to Section 45 broaden the regulation making powers under the Act and ensures that treaties, protocols, codes, guidelines, standards and measures that are adopted continue to apply to the law of Kiribati even when they are amended in the future. This will support the implementation of electronic monitoring and reporting systems and the implementation of other emerging technologies. It will also provide for procedures to support cameras on fishing vessels by way of a Memorandum Of Understanding (MOU) between the Ministry and vessel owners.

The new Section 45A clarifies that where there is a conflict between the Fisheries Act or a regulation made under the Fisheries Act and any other Act or regulation that the Fisheries Act and regulations prevail over any other Act or regulation.

The Schedule to the Act is amended to add additional international treaties, agreements and measures to which Kiribati is a signatory.

An Act
entitled

AN ACT TO AMEND THE LOCAL GOVERNMENT ACT 1984

Commencement:

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

1. Short title and commencement

This Act may be cited as the Local Government (Amendment) Act 2023 and shall commence on such date as the Minister may by notice appoint.

2. Amendment of Section 2 (iv)

Section 2 (iv) of the Act is amended as follows:

by repealing the definition of “waters adjacent” and substituting with the following:

““waters adjacent” means, notwithstanding the provisions of the Fisheries Ordinance and the Maritime Zones Declaration Act, the lagoon and/or parts of the sea having as, its inner limits the low-water line, as defined in the Marine Zones Declaration Act, and extending 3 nautical miles seaward from the high-water mark, but where two or more councils have their adjacent waters over-lapping, an agreement shall be reached to determine the extent of their adjacent waters, failing that the Minister shall so determine.”

LOCAL GOVERNMENT AMENDMENT ACT 2023

EXPLANATORY MEMORANDUM

This Act amends the Local Government Act 1984 as amended subsequently by the Local Government (Amendment) Act 1985, 1987, 1989, 1992, 1994, 1995, 2006, 2008, 2013 and 2018. The amendment clarifies the phrase “3 nautical miles seaward” to mean “3 nautical miles seaward from the high-water mark”.

REPUBLIC OF KIRIBATI

MARINE ZONE (DECLARATION) ACT 2011

Marine Zone (Declarations and Protocols) Regulations 2023

In exercise of the powers conferred by section 14 of the Marine Zone (Declaration) Act 2011, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be cited as the Marine Zone (Declarations and Protocols) Regulations 2023 and shall come into force on the date of its publication for exhibition at the office of Te Beretitenti.

2. Adoption of Declaration

The “Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise” adopted by the Pacific Island Forum Leaders on 6 August 2021, is hereby declared to be part of the law of Kiribati.

3. Spatial Planning

All marine spatial planning that is carried out under the Act shall be carried out by the Geoscience Division of the Ministry of Fisheries and Marine Resources Development, or its successor.

4. Adoption of Protocol

The conduct of scientific research within the exclusive economic zone, shall be carried out in accordance with the “Protocol on Marine Scientific Research” adopted under the Seabed Minerals Act 2017.

Marine Zone (Declarations and Protocols) Regulations 2023

EXPLANATORY MEMORANDUM

These Regulations intend to implement assorted climate change initiatives.

Section 2 adopts the “Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise” adopted by the Pacific Island Forum Leaders on 6 August 2021 and declares it to be part of the law of Kiribati.

Section 3 provides that all marine spatial planning shall be carried out by the Geoscience Division of the MFMRD.

Section 4 ensures that the conducting of scientific research within the exclusive economic zone, is carried out in accordance with the “Protocol on Marine Scientific Research” adopted under the Seabed Minerals Act 2017.

An Act

entitled

AN ACT TO AMEND THE SEABED MINERALS ACT 2017

Commencement:

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

1. Short title and commencement

This Act may be cited as the Seabed Mineral (Amendment) Act 2023 and shall commence on such date as the Minister may by notice appoint.

2. Amendment Part IX

Part IX of the Act is amended by adding the following Section:

Adoption of Marine Scientific Research protocol

98A. Marine scientific research approved under this Part shall meet the requirements of the Protocol on Marine Scientific Research April 2021 approved Ministry of Fisheries and Marine Resources Development.

SEABED MINERALS AMENDMENT ACT 2023

EXPLANATORY MEMORANDUM

This Act amends the Seabed Mineral Act 2017.

The amendment requires that all marine scientific research approved under the Act meets the requirements of the Protocol on Marine Scientific Research April 2021 approved Ministry of Fisheries and Marine Resources Development.

REPUBLIC OF KIRIBATI

FISHERIES ACT 2010

(No.6 of 2010)

Domestic Fishing Zone Limit Amendment Regulations 2023

In exercise of the powers conferred by section 45 of the Fisheries Act 2010, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be cited as the Domestic Fishing Zone Limit Amendment Regulations 2023 and shall come into force on the date of its publication for exhibition at the office of Te Beretitenti.

2. Amendment of Section 11

Section 11 of the Domestic Fishing Zone Limit Amendment Regulations 2015 is amended by inserting the following new subsections:

(4) No fishing vessel except for a domestic fishing vessel shall enter the Domestic Fishing Zone to fish.

(5) A foreign fishing vessel shall not enter the Domestic Fishing Zone to fish.

EXPLANATORY MEMORANDUM

The new subsections 11 (4) and (5) clarify that only domestic fishing vessels are permitted to enter the Domestic Fishing Zone to fish and that foreign fishing vessels are prohibited from entering the Zone to fish.

REPUBLIC OF KIRIBATI

FISHERIES ACT 2010

(No.6 of 2010)

Fisheries (Fish Aggregating Device Management) Amendment Regulations 2023

In exercise of the powers conferred by section 45 of the Fisheries Act 2010, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be cited as the Fisheries (Fish Aggregating Device Management) Amendment Regulations 2023 and shall come into force on the date of its publication for exhibition at the office of Te Beretitenti.

2. Amendment of Part II

Part II of the Fisheries (Fish Aggregating Device Management) Amendment Regulations 2014 is amended by inserting the following new Section 3A:

Application of Regulation to small scale fishing vessels

3A. A reference in this regulation to a purse seine fishing vessel shall be deemed to include a reference to small scale coastal fishing vessel.

EXPLANATORY MEMORANDUM

The new Section 3A provides that the Regulations also apply to small scale coastal fishing vessels.

REPUBLIC OF KIRIBATI

FISHERIES ACT 2010

(No.6 of 2010)

Fish Export Regulations 2023

In exercise of the powers conferred by section 45 of the Fisheries Act 2010, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be cited as the Fish Export Regulations 2023 and shall come into force on the date of its publication for exhibition at the office of Te Beretitenti.

2. Insertion of new Part XI

The Fish Export Regulations 2012 made under the Fisheries Act 2010 is amended by inserting the following new Part XI:

**Part XI
Revocation**

31. The Fisheries Processing and Export Regulations 1981 are revoked.

EXPLANATORY MEMORANDUM

The new Section 31 revokes the Fisheries Processing and Export Regulations 1981. This revocation was omitted by accident when the new Fish Export Regulations were made in 2012.

REPUBLIC OF KIRIBATI

FISHERIES ACT 2010

(No.6 of 2010)

Fisheries Electronic Monitoring – Electronic Reporting Regulations 2023

In exercise of the powers conferred by section 45 of the Fisheries Act 2010, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be cited as the Fisheries (Electronic Monitoring – Electronic Reporting) Regulations 2023 and shall come into force on the date of its publication for exhibition at the office of Te Beretitenti.

2. Electronic Monitoring – Electronic Reporting - licence condition

As a condition of getting and maintaining a foreign long line licence or a foreign purse seine licence the operator and owner of a vessel applying for a licence for the vessel shall install on-board cameras and associated equipment to monitor the everyday activities on board the vessel, including setting and hauling.

3. Rules governing Electronic Monitoring and Reporting

The following rules apply to the installation of on-board cameras and associated equipment on a vessel:

- (1) The vessel owner and operator shall enter into a Memorandum of Understanding with the Ministry of Fisheries and Marine Resources Development in the form provided by the Ministry.
- (2) The Ministry will supply the vessel with an on-board wide-angle camera(s) and associated equipment at no cost to the owner or operator.
- (3) The Ministry will work with the owner and operator of the vessel to place the camera(s) and any associated equipment in an appropriate place on board the vessel.
- (4) The camera(s) that are installed on the vessel shall record every activity on board the vessels for the number of trips agreed upon with the Ministry including imagery that can be analysed to determine the effort (number of sets, hooks or baskets), the total catch and other noticeable events (e.g., transhipments and crew behaviours) taking place on the vessel.

- (5) The camera(s) and associated equipment shall be switched on at all times while the vessel is inside Kiribati waters and high seas.
- (6) The camera(s) and associated equipment shall not be tampered with, altered, damaged or disabled, moved or removed from the agreed installed position.
- (7) The owner and operator shall allow authorized officers of the Ministry to board in Kiribati waters and in port and to have full access to the camera(s) and associated equipment without obstruction, assault, resist, delay, refusal, or intimidating or interfering with their duties.
- (8) Upon completion of a trip, and upon return back to port in Kiribati, the hard drives will be checked and collected by Ministry staff and replaced with new ones.
- (9) Ministry staff will conduct an analysis of the contents of the hard drive.

4. Rules Governing the Memorandum of Understanding

The following rules apply to Memorandum of Understanding entered into between the Ministry and a vessel owner and operator:

- (1) A Memorandum of Understanding entered into under this Regulation may only be modified by written agreement between the Ministry and the vessel owner and operator.
- (2) Where the economic situation or legal regulatory provisions affecting the operation of a Memorandum of Understanding change to such an extent that in order for its objectives to be properly implemented, the Memorandum of Understanding would have to be modified, then the parties shall consult each other and revise the terms of the Memorandum of Understanding accordingly.
- (3) A Memorandum of Understanding is valid for the period of the licence for the vessel and may be terminated by the Ministry at any time by giving at least thirty days (30) prior written notice to the owner and operator.
- (4) Where a Memorandum of Understanding is terminated, the owner and operator shall return the on-board camera and any associated equipment to the Ministry.

EXPLANATORY MEMORANDUM

This regulation requires foreign long line and foreign purse seine vessels, as a condition of getting and maintaining a licence, to install and operate on board cameras in order to provide electronic monitoring and reporting of fishing activities on the vessels.

The regulation also requires owners and operators to enter into a Memorandum of Understanding with the Ministry that will govern the operation of the cameras and associated equipment.

The regulation sets out the rules governing the installation and operation of the on-board cameras and associated equipment and the rules governing the Memorandum of Understanding.

REPUBLIC OF KIRIBATI

FISHERIES ACT 2010

(No.6 of 2010)

Fisheries Funds Regulations 2023

In exercise of the powers conferred by section 45 of the Fisheries Act 2010, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be cited as the Fisheries Funds Regulations 2023 and shall come into force on the date of its publication for exhibition at the office of Te Beretitenti.

2. Funds continued

The following funds, operated and maintained by the Ministry of Fisheries and Marine Resources Development, are continued under the Fisheries Act 2010 and shall be funded as set out below:

Fisheries Management Fund

- (1) The Fisheries Management Fund is hereby continued for the purpose of funding Kiribati's contribution to various and international fisheries Agreements, Arrangements and Conventions that Kiribati is Party to.

A foreign fishing vessel shall make an annual payment of a management fund fee in the amount determined by the Director of Fisheries in consultation with the Minister prior to their being issued a registration certificate for registering on the National Register of Licensed Fishing Vessels.

A domestic fishing vessel shall make an annual payment of a management fund fee in the amount determined by the Director of Fisheries in consultation with the Minister

Fisheries Observer Fund

- (2) The Fisheries Observer Fund is hereby continued to provide funds for national observers on board fishing vessels to ensure that operators of licensed fishing vessels comply with the minimum terms and conditions, national laws, and regulations.

A licensed fishing vessels shall make an annual payment of an observer fund fee amounting to that amount set out in the vessel's licence.

Fisheries Monitoring Fund

- (3) The Fisheries Monitoring Fund is hereby continued to provide the necessary funds needed to conduct surveillance activities both aerial and maritime in nature in Kiribati's extensive Exclusive Economic zone.

A licensed foreign fishing vessels shall make an annual payment of a monitoring fund fee in the amount determined by the Director of Fisheries in consultation with the Minister.

Artisanal Fisheries Fund

- (4) The Artisanal Fisheries Fund is hereby continued to contribute in the assistance of managing the national artisanal tuna sector.

A licensed fishing vessels shall make an annual payment of an artisanal fund fee in the amount set out in the vessel's licence, which fee may include an additional fee for a licensed fishing vessel flying the Kiribati Flag that is involved with onshore processing.

Vessel Monitoring System Fund

- (5) The vessel monitoring system fund is hereby continued to ensure that foreign vessels are regularly monitored, and that they comply with various national, subregional, regional and international fisheries instruments governing their operation and of their subsequent harvesting of fisheries resources.

A licensed fishing vessels shall make an annual payment of a monitoring system fund fee in the amount determined by the Director of Fisheries in consultation with the Minister.

EXPLANATORY MEMORANDUM

These regulations continue the following funds and ensure that the monies collected are paid into the funds for the purposes and in the amounts and manner set out in the regulations:

Fisheries Management Fund
Fisheries Observer Fund
Fisheries Monitoring fund
Artisanal Fisheries Fund
Vessel Monitoring System Fund

REPUBLIC OF KIRIBATI

FISHERIES ACT 2010

(No.6 of 2010)

Flagging of Foreign Fishing Vessels Regulations 2023

In exercise of the powers conferred by section 45 of the Fisheries Act 2010, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be cited as the Flagging of Foreign fishing Vessels Regulations 2023 and shall come into force on the date of its publication for exhibition at the office of Te Beretitenti.

2. Foreign Vessel Licence - licence condition

As a condition of applying to be registered as a flag vessel under the Kiribati National Register of Licensed Fishing Vessels a foreign fishing vessel must ensure,

- (a) that it demonstrably meets the eligibility criteria sets by the Director of Fisheries in consultation with the Minister; and
- (b) meets the eligibility criteria for access and flag agreement set out under the FSM Arrangement established by the Pacific Islands Forum Fisheries Agency.

EXPLANATORY MEMORANDUM

This regulation requires foreign fishing vessels, as a condition of applying to be registered as a flag vessel under the Kiribati National Register of Licensed Fishing Vessels to ensure,

- (c) that it demonstrably meets the eligibility criteria sets by the Director of Fisheries in consultation with the Minister; and
- (d) that it meets the eligibility criteria for access and flag agreement set out under the FSM Arrangement established by the Pacific Islands Forum Fisheries Agency.

REPUBLIC OF KIRIBATI

FISHERIES ACT 2010

(No.6 of 2010)

Sharks Sanctuary Regulations 2023

In exercise of the powers conferred by section 45 of the Fisheries Act 2010, the Beretitenti acting in accordance with the advice of the Cabinet, hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be cited as the Sharks Sanctuary Regulations 2023 and shall come into force on the date of its publication for exhibition at the office of Te Beretitenti.

2. Amendment of Subsection 8 (3)

Subsection 8 (3) of the Sharks Sanctuary Regulations 2015 is amended by revoking the subsection and inserting the following new subsection:

(3) Regulation 7 (1) does not apply to a foreign fishing vessel that has entered Kiribati waters for a purpose recognized by the United Nations Convention on the Law of the Sea where the vessel has been issued a permit exempting the vessel from the application of the wire trace prohibition set out in that section.

EXPLANATORY MEMORANDUM

The new subsection 8 (3) clarifies that the prohibition against using wire trace does not apply to a foreign fishing vessel that has entered Kiribati waters for a purpose recognized by the United Nations Convention on the Law of the Sea where the vessel has been issued a permit exempting the vessel from the application of the wire trace prohibition.

APPENDIX 4

Cabinet Submission

File Ref:

Memorandum No.

/2023
28th February 2023

LEGISLATION AND REGULATIONS TO SUPPORT THE PACIFIC REGIONAL OCEANSCAPE PROGRAM (PROP)

(Presented by the Minister of MFMRD)

PURPOSE

The purpose of the memo is to seek consideration and support from Cabinet for the attached Legislation and Regulations.

BACKGROUND

The Government of Kiribati, in cooperation with the World Bank, is committed to further enhancing the effective management of Kiribati's oceanic and coastal fisheries through the Pacific Regional Oceanscape Program (PROP).

The Pacific Regional Oceanscape Program (PROP) consists of both oceanic and coastal fisheries components that supports Kiribati to better manage fisheries and fishery habitats. The lead agency for the Pacific Islands Regional Oceanscape Program (PROP) Project is the Ministry of Fisheries and Marine Research Development (MFMRD).

Better management will be achieved through enhanced legislative and regulatory compliance measures for large-scale oceanic fisheries and diversification of sustainable marine-based sources of revenue for coastal communities.

The approval of the attached legislation and regulations will ensure an effective legislative and regulatory framework as part the Kiribati PROP Project.

The legislative amendments will also ensure that Kiribati is in compliance with Article 73 of the United Nations Convention on the Law of the Sea [UNCLOS]. In order to be eligible for World Bank financing for fisheries enforcement, it is a World Bank requirement that a country's fisheries legislation must be compatible with international law, particularly, with Article 73 of UNCLOS.

As part of the World Bank initiative to fund fisheries enforcement the Ministry has developed a Memorandum of Understanding that will be entered into between the Ministry and vessel owners and operators that will provide on board cameras to facilitate electronic monitoring and reporting of fishing activities on vessels operating in Kiribati waters [i.e. the Exclusive Economic Zone of Kiribati]. The World Bank has agreed to fund this initiative.

CONSULTATION

The draft legislation and regulations are a result of consultations with key fisheries staff and a comprehensive review and gap analysis of all national fisheries legislation and regulations, including relevant regional and international laws.

RECOMMENDATIONS

Based on the above, I therefore invite Cabinet's approval and consideration of the following legislation and regulations:

An Act to amend the Fisheries Act 2010

Clause 12 A (3) (c) of the Act is amended to ensure that where a contract is entered into to control marine genetic research that the contract contains provisions that address benefit sharing, traceability and intellectual property rights.

The new Subsection 12A (5) that is added to the Act ensures that marine scientific research is carried out in accordance with the "Protocol on Marine Scientific Research" adopted under the Seabed Minerals Act 2017 [see amendments to the Seabed Minerals Act 2017 listed below].

The amendments to sections 29, 30, 40 of the Act and the addition of a new section 44A brings the Act into compliance with Article 73 of the United Nations Law of the Sea [UNCLOS].

The amendments to Section 45 of the Act broaden the regulation making powers under the Act and ensures that codes, guidelines, standards and measures that are adopted by regulations continue to apply to the law of Kiribati even when they are amended in the future.

The new Section 45A to the Act clarifies that where there is a conflict between the Fisheries Act or a regulation made under the Fisheries Act and any other Act or regulation that the Fisheries Act and regulations prevail over any other Act or regulation.

The Schedule to the Act is amended to add the following additional international treaties, agreements and measures to which Kiribati is a signatory:

The Palau Arrangement for the Management of the Western Pacific Fishery, as amended

If ratified by Kiribati, the 2012 Agreement on Strengthening Implementation of the 1992 Niue Treaty on Cooperation and Law Enforcement in the South Pacific Region

If ratified by Kiribati, the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

If ratified by Kiribati, the Conservation and Management Measure on Minimum Standards for Port State Measures of the Western and Central Fisheries Commission, 2017-02.

An Act to amend the Local Government Act 1984

The amendment clarifies the phrase “3 nautical miles seaward” in the definition of “waters adjacent” to mean “3 nautical miles seaward from the high-water mark”.

An Act to amend the Seabed Minerals Act 2017

The amendment to Part IX of the Act adds a new section 98A that requires that all marine scientific research approved under the Act meets the requirements of the Protocol on Marine Scientific Research April 2021 approved Ministry of Fisheries and Marine Resources Development.

Fisheries (Fish Aggregating Device Management) Amendment Regulations 2023

The new section 3A that is added to the regulations ensures that a reference in the regulation to a purse seine fishing vessel shall be deemed to include a reference to small scale coastal fishing vessels.

Domestic Fishing Zone Limit Amendment Regulations 2023

The new subsections 11 (4) and (5) that are added to the regulations clarify that only domestic fishing vessels are permitted to enter the Domestic Fishing Zone to fish and that foreign fishing vessels are prohibited from entering the Zone to fish.

Fisheries Funds Regulations 2023

The regulations continue the following funds and ensure that the monies collected are paid into the funds for the purposes and in the amounts and manner set out in the regulations:

Fisheries Management Fund
Fisheries Observer Fund
Fisheries Monitoring fund
Artisanal Fisheries Fund
Vessel Monitoring System Fund

Fish Export Regulations 2023

The Regulations revoke the Fisheries Processing and Export Regulations 1981.

Marine Zone (Declarations and Protocols) Regulations 2023

These Regulations intend to implement assorted climate change initiatives.

Section 2 adopts the “Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise” adopted by the Pacific Island Forum Leaders on 6 August 2021 and declares it to be part of the law of Kiribati.

Section 3 provides that all marine spatial planning shall be carried out by the Geoscience Division of the MFMRD.

Section 4 ensures that the conducting of scientific research within the exclusive economic zone, is carried out in accordance with the “Protocol on Marine Scientific Research” adopted under the Seabed Minerals Act 2017.

Sharks Sanctuary Regulations 2023

The Regulations are amended by replacing subsection 8 (3) which now clarifies that the prohibition against using wire trace does not apply to a foreign fishing vessel that has entered Kiribati waters for a purpose recognized by the United Nations Convention on the Law of the Sea where the vessel has been issued a permit exempting the vessel from the application of the wire trace prohibition.

Fisheries (Electronic Monitoring – Electronic Reporting) Regulations 2023

The Regulations require foreign long line and foreign purse seine vessels, as a condition of getting and maintaining a licence, to install and operate on board cameras in order to provide electronic monitoring and reporting of fishing activities on the vessels.

The Regulations also require owners and operators to enter into a Memorandum of Understanding with the Ministry that will govern the operation of the cameras and associated equipment.

The regulations set out the rules governing the installation and operation of the on-board cameras and associated equipment and the rules governing the Memorandum of Understanding.

Flagging of Foreign Fishing Vessels 2023

The regulation requires foreign fishing vessels, as a condition of applying to be registered as a flag vessel under the Kiribati National Register of Licensed Fishing Vessels to ensure,

- (a) that it demonstrably meets the eligibility criteria sets by the Director of Fisheries in consultation with the Minister; and
- (b) that it meets the eligibility criteria for access and flag agreement set out under the FSM Arrangement established by the Pacific Islands Forum Fisheries Agency.

Bairiki

T.N

Tarawa

6 February 2023

APPENDIX 5

Memorandum of Understanding (MOU)

Between

The Ministry of Fisheries and Marine Resources Development (Kiribati)

-and-

[insert name]
Vessel Owner

-and-

[insert name]
Vessel Operator

This Memorandum of Understanding is entered into by the **Ministry of Fisheries and Marine Resources Development**, hereinafter referred to as “**MFMRD**” and “[insert name of vessel owner]”, hereinafter referred to as the “**Owner**” and “[insert name of vessel operator]”, hereinafter referred to as the “**Operator**” for the following vessel, hereinafter referred to as the “**Vessel**”:

Vessel name:

Licence No.:

Type of Vessel:

Call Sign:

Flag State:

Registration No.:

FFA Vessel ID:

Company Name or Association and address:

Vessel Owner and address:

Vessel Operator and address:

Whereas, it is in the interest of the parties to maintain a viable fishing industry in the EEZ of Kiribati and elsewhere in the Pacific.

Whereas, monitoring fishing activities in the EEZ of Kiribati will assist in maintaining a viable fishing stock in the EEZ of Kiribati and elsewhere in the Pacific.

Whereas, MFMRD intends to equip select longline vessels and purse seine vessels with on-board cameras and associated equipment to monitor the everyday activities on board

the vessels, including setting and hauling with the goal of making this a condition of licensing under the Fisheries Act 2010.

Whereas, these cameras will record every activity on board the vessels for a certain number of trips and upon completion of a trip, when they return back to port in Kiribati, the hard drives will be checked and collected by MFMRD staff and replaced with new ones.

NOW, THEREFORE, MFMRD, the Owner and the Operator (hereinafter referred to collectively as the “**Parties**”) hereby agree as follows:

Article 1
Purpose of the MoU

1. The purpose of this MoU is to create a mechanism that will help monitor everyday fishing activities on the Vessel by means of an on-board camera(s).

Article 2
Role of the Parties

The parties hereby agree that:

1. The MFMRD will supply the Vessel with an on-board wide-angle camera(s) and associated equipment at no cost to the Owner or Operator.
2. The MFMRD will work with the Owner and Operator of the Vessel to place the camera(s) and any associated equipment in an appropriate place on board the Vessel.
3. The Owner and Operator agree that the camera(s) will be used to record imagery that can be analysed to determine the effort (number of sets, hooks or baskets), the total catch and other noticeable events (e.g., transhipments and crew behaviours) taking place on the Vessel.
4. The camera(s) and associated equipment must be switched on at all times while the Vessel is inside Kiribati waters and high seas.
5. The camera(s) and associated equipment shall not be tampered with, altered, damaged or disabled, moved or removed from the agreed installed position.
6. The Owner and Operator shall allow authorized officers to board in Kiribati waters and in port and have full access the camera(s) and associated equipment without obstruction, assault, resist, delay, refusal, or intimidating or interfering with their duties.

7. The Operator of the Vessel will return the camera hard drive to the MFMRD at the end of each trip and the MFMRD will replace the hard drive with a new one.
8. MFMRD staff will conduct an analysis of the contents of the hard drive.

**Article 3
Amendment**

1. This MoU may be modified only by written agreement between Parties.
2. If the economic situation or legal regulatory provisions affecting the operation of the MoU change to such an extent that in order for its objectives to be properly implemented, this MoU would have to be modified, then the parties shall consult each other and revise the terms of this MoU.

**Article 4
Term of Agreement**

1. This MoU is valid for the period of the licence for the Vessel and may be terminated by the MFMRD at any time by giving at least thirty days (30) prior written notice to the Owner and Operator.
2. The Owner and Operator may terminate this MoU, if the keeping of an on-board camera is not a condition of keeping a licence under the Fisheries Act 2010, by giving at least thirty days (30) prior written notice to the MFMRD.
3. Where this MoU is terminated, the Owner and Operator shall return the on-board camera and any associated equipment to the MFMRD.

**Article 9
Effective date**

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the respective parties, have signed this Memorandum of Understanding in English in two (2) copies.

Signatures:

MFMRD
Name
Title
date

OWNER

Name

Title

date

OPERATOR

Name

Title

Date

APPENDIX 6

Template Contract for Marine Genetic Resources

GOVERNMENT OF KIRIBATI
MINISTRY OF FISHERIES AND MARINE RESOURCES
DEVELOPMENT

P.O.Box 64, Bairiki, Tarawa, Republic of Kiribati
Tel: (686) 75021099 Fax: (686) 75021120 Email:
info@mfmrd.gov.ki

PREAMBLE

WHEREAS

The Government of Kiribati has established a Protocol on Marine Scientific Research within the National Jurisdiction of the Republic of Kiribati on April 2021.

One of the objectives of the Protocol is the conservation and sustainable use of Marine Genetic Material and Resources (MGR) and the fair and equitable sharing of the benefits arising out of their use.

The Parties to this agreement agree, in accordance with the Protocol, to share, in a fair and equitable way, the benefits arising from the utilization of these materials and resources, on a complimentary and mutually reinforcing basis.

The Parties also agree that where, under the terms of this agreement, any MGR is transferred that the nature of the transfer will be transparent such that it is clear what is being transferred, from whom it is being transferred, when it is being transferred, to whom it is being transferred and how the MGR will be used once it is transferred, whether or not the transfer is for a commercial purpose.

The Parties agree that this agreement should be in machine readable format to assist in traceability.

1. Parties to the Agreement.

The Agreement is entered into on (insert date:xxx) by and between;

Party 1. (Name of Access Provider)

- *Government of Republic of Kiribati and Ministry of Fisheries and Marine Resources Development (MFMRD).*
- *Secretary and Director of Geo-Science Division (DGSD), Offshore Mineral Section Geo-Science Division, (MFMRD).*

AND

Party 2. (Name of Access User)

-
-

2. Prior Informed Consent

2.1 The Agreement is based on the Prior Informed Consent (PIC) issued beforehand by the Provider to the User for the access to the genetic resources concerned. The PIC document is attached to this Agreement and is considered an integral part of the Agreement.

2.2 The Provider hereby confirms that he/she has been informed on the research **project in the form of a written consent letter (PIC formatted template)** by the User and consents to provide access to genetic resources in situ and/or ex situ necessary to carry out the research in accordance with the research project attached to this Agreement.

3. The Purpose of the Contractual agreement

The purpose of this agreement is to sets out the Kiribati Government's standard terms and conditions for access of the marine and fisheries resources within the jurisdiction of Kiribati. It specifies the terms for

1. Accessing the marine genetic resources
2. Their exploitation and utilization in accordance with the PIC
3. Their possible transfer to third parties, and
4. For sharing the benefits resulting from the utilization of marine genetic resources

In accordance to Section 17 of the Fisheries Act 2010, it stipulates the powers of the **Minister as need necessary may**, on behalf of the Republic, enter into an agreement with a person, a government or agency of a government or an international agency for the purpose of enabling the Government to perform any of its functions under the Act.

4. Definitions

In this agreement the terms and definitions used and defined in accordance under Article 2 of the CBD shall have the same meaning, unless otherwise defined in this agreement.

If need to add the list of terms**please insert definitions of Genetics, Monetary and Non-Monetary Benefits, fish (Fisheries Amendment Act), Genetic Resources, Traditional Knowledge (TK), Mutual Agreed Terms (MAT) and Prior Informed Consent, Indigenous People etc**

5. Legal Basis

6. Deep Sea Minerals and Genetic Resources to be accessed

The User shall have access to the following Genetic Resources(s)

Two types of Seabed Minerals exist within Kiribati Waters which includes; Cobalt rich curst (CRC) and Manganese nodules (MN). Marine Genetic Resources refer to genetic material of marine plant, marine animal, microbial or other origin containing units of heredity which have an actual or potential value.

6.1 Since the species/strains present at the collection site are not know to the user at the time of concluding this Agreement, a general account of species/strains most likely to be collected is given in Annex XX. A list to the collected samples according to the researcher's field-notes is presented to the Provider within XX months after having gathered the samples.

6.2 If the collected samples cannot be identified in the list of collected samples within the above prescribed period, their identification must be shared with the User as soon as it is available.

7. Utilization

The Material may be utilized for non-commercial purposes and commercial purposes as well including for academic research and collections, and for training, teaching and education. The User must comply with the User's and Provider's national regulations and with relevant international law. The utilization of the Material or derived information for any type of Commercialization is prohibited.

7.1 The Genetic Material shall be used exclusively for the following purposes: (insert allowed activities and/or uses).

Non-commercial purposes see Annex XX.

Commercial purposes include:

- i. Pharmaceuticals (anti-cancer drugs, anti-inflammatory drugs, anti-viral drugs, anti-leukemia drugs, anti-melanoma drugs, etc)
- ii. Cosmetics
- iii. Bioremediation

8. Change of Intent

8.1 Any change of intend occurs with the transition of a resource from the academic to development for potential commercial use shall require a new Prior Informed Consent in writing issued by the Provider

8.2 The "change of intend" of such commercialization shall be subject to terms of new Agreement (MAT) between the Provider and involved Parties.

9. Transfer to 3rd Parties and Traceability

1) For Non-Commercial:

9.1.1 Transfer of the Genetic Resources for the purposes of academic research and collections, and for training teaching and education, or any other non-commercial activities is not allowed unless such transfer is consistent with the terms and conditions under this Agreement.

9.2 pursuant to 9.1 recipient user shall inform the Provider in writing of the reasons of the transfer.

9.2.2 Where a transfer of Genetic Resources is permitted under the terms and conditions of this agreement, the User agrees to inform the Provider with the following information:

- i. what is being transferred,
- ii. when the transfer is taking place,
- iii. to whom the transfer is being made,
- iv. the purpose of the transfer, and
- v. how the Genetic Resource will be used by the transferee.

9.2.3 Where a transfer of Genetic Resources is carried out under this article the User shall not transfer the Genetic Resources to the transferee unless the transferee agrees to be bound by the terms of this agreement and the Provider agrees to the transfer.

9.2.4. A transferee who enters into an agreement under this Article shall be bound by the same data sharing obligations as the original User under this agreement.

9.3 User Recipient shall ensure that the subsequent person or institution (Third Party) is informed about the provisions under this agreement and undertakes to pass on the Genetic Resources under the same right and obligation.

2) For Commercial:

9.4 Genetic Resources remains the property of the Government of Kiribati.

9.5 Any sample components of genetic resources, provided by temporarily or permanently, shall not release to a third party without the prior execution of a new material transfer agreement (MTA) between the original provider and the new recipient user (Third Party);

9.6 No part of by-product shall be lent or transferred to another researcher or institution without prior written authorization, which shall require a new procedure;

9.6.2. Where a loan or transfer of Genetic Resources is permitted under the terms and conditions of this agreement, the User agrees to inform the Provider with the following information:

- i. what is being loaned or transferred,
- ii. when the loan or transfer is taking place,
- iii. to whom the loan or transfer is being made,
- iv. the purpose of the loan or transfer, and
- v. how the Genetic Resource will be used by the transferee.

9.6.3. A transferee who enters into an agreement under this Article shall be bound by the same data sharing obligations as the original User under this agreement.

10.. Benefit Sharing

The benefits arising from the access and use of the Genetic Resources shall be shared fairly and equitably by the User, in accordance with the principles established in the CBD.

Basic benefits to be shared include:

- a. The offer to the Provider to include local researchers in the research activities, if such interest exists.
- b. In case of publications or oral presentation of the research results, full acknowledgement is to be given to the source of the Genetic Resource;
- c. If TK associated to the Genetic Resources is involved, the research results published or presented orally will include full acknowledgement of the source of the Genetic Resources and the TK, if so required by the providers.
- d. The Provider will receive a copy of all publications;
- e. Research results will be communicated to involved stakeholders (e.g. communities, indigenous people) in an adequate manner and according to reasonable requirements of the Provider;
- f. If applicable, share duplicate specimens with the repository in the Provider country in accordance with good scientific practice.

In addition, the User agrees to share the following benefits:

11. Rights and Obligations of the Provider

The Provider defined in Article 1 is the responsible contact point for the User for the entire duration of the present Agreement.

The Provider has the obligation to facilitate access to the Genetic Resources. This includes the facilitation of the acquisition of other permits required in accordance with the relevant national or regional regulations in the Provider country as well as export permits.

12. Rights and Obligations of the User

12.1 The User is entitled to administrative support and guidance to facilitate the acquisition of the necessary permits required by the Providing country.

12.2 The User shall not use the Genetic Resource nor derivatives generated in the research for any commercial purposes, nor shall the User commercialize any Product derived from the Genetic Resource, unless with the written consent of the Provider.

12.3 The User is obliged to take all reasonable precautions to prevent the Genetic Resource coming into the possession of any Unauthorized Person.

12.4 The User is obliged to inform the Provider about any unforeseen research results that

are of potential commercial interest, prior to any disclosure of this information to the public

12.5. The User is obliged to comply to the Provider's prescribed protocols and reporting template subject to 12.4

12.6 If the research implies TK associated to the Genetic Resource, the User is obliged to respect any relevant international law and the national and regional regulations in the Provider's country, and has to proceed according to the instructions of the Provider. In any case the User is obliged to respect the customary law of the holders of the TK and has to apply ethical standards.

12.7 Corresponding to national law the User will conclude an ancillary contract with the holders of TK and/or the private land owners of the genetic resources. The ancillary contract forms an integral part of this Agreement. (proposed template for Ancillary contract specifically for TK and Resource Owners eg. individual and communities)

13. Data Sharing

13.1 The User agrees that the Provider has the right to access the following data resulting from the research:

- a. The Sample specimen and quantity (Tekatie could you please insert the data component of this section in a form of a list below.
- b.
- c.

13.2 The User shall facilitate access to the above defined data for the Provider. The Provider agrees that for using the data in his own research, he needs the consent of the User.

13.3 A User or transferee of a User under this agreement shall ensure that data that is provided to the Provider is in a format that is acceptable to the Provider.

14.. Reporting

The User will deliver a written report in accordance with the Provider's instructions as to its structure, information included, etc, upon his/her request.

14.1 The User shall submit an annual written report on the research accomplished on a timely manner agreed OR

Upon request of the Provider, the User submits a written report on the research accomplished.

14.2 Upon request of the Provider, the User submits an annual written report on the research accomplished. The report shall include a list of Third Persons to whom the Genetic Material has been transferred.

14.3 Since the Provider is a private citizen, upon his/her request, the report is translated into the local language by the User and adapted to a non-scientific audience.

15.. Intellectual Property Rights

15.1 The User shall not claim any intellectual property rights over the Genetic Resource in the form received.

If the User wants to obtain intellectual property rights on research results such act shall be treated as change in utilization and thus shall be regulated under Article 7 of the present Agreement.

15.2 If the Provider wishes to obtain IPR on research results, such act shall be treated as change in utilization and shall be regulated under Article 7 of the present Agreement. In particular the ownership of the IPR and the distribution of the value derived from the IPR are to be negotiated.

16. Publications

The User has the right to publish the results of the research related to the Genetic Resource according to Article 6 of the present Agreement, and according to good scientific practice. The origin of the Genetic Resource has to be acknowledged.

16.1 The User has the right to publish the results of the research related to the Genetic Resource according to good scientific practice. The origin of the Genetic Resource has to be acknowledged, as well as the sources of TK associated with the Genetic Resource.

16.2 The holder of TK associated to the Genetic Material has the right to request confidentiality of specific information [describe the information subject to confidentiality] such as for spiritual reasons; to prevent the depletion of the genetic resources; and/or to prevent unsafe/hazardous applications of the TK in the health sector.

16.3 If the User, in the course of the research, discovers any unforeseen commercial potential of the Genetic Material, he/she is obliged to share such information with the Provider prior to any publication of such information.

16.4 If the Provider intends to pursue a potential commercialization, this is subject to negotiations between the Provider and the User according to Article 7. The Provider agrees

not to hold up the User's research work unless concerns are concrete and justified in terms of well-defined proprietary interest.

16.5 If the User is prevented from publishing the results of the research due to the Provider's wish to obtain a patent over the research results, the Provider shall file the patent application within [XX] months. After the agreed period, if the Provider has failed to file a patent application, the User has the right to proceed with the publication of the research.

17. Handling of the Genetic Material

After Termination of the Agreement

17.1 Upon completion of the project, Genetic Material will be stored or disposed of according to the utilization agreed under Article 6.

17.2 If the Genetic Material has been placed in storage, or in public collections, upon expiration of the Agreement or its termination, the Genetic Material may be available for use only under the same conditions as contained in this Agreement.

18. Settlement of Disputes.

The Parties agree to make attempts in good faith to negotiate the resolution of any disputes that may arise under this Agreement. If the Parties are not able to resolve a dispute within a period of [XX] months, such dispute shall be finally settled by an arbiter to be mutually agreed between the Parties.

18.1 Both Parties agree that any dispute arising during the course of this Agreement is dealt with as follows:

- a. the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- b. the Parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
- c. the Parties have **20 Business Days** from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and

18.2 If there is no resolution of the dispute;

- there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 20 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 20 Business Days,

18.3 Then, either Party may commence legal proceedings.

18.4 Despite any existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform their respective obligations in accordance with this Agreement.

The operation of this clause survives the expiration or earlier termination of the Term of this AGREEMENT

19. Duration and Termination of the Agreement

The present Agreement shall end on [insert the date] and may be renewed upon the mutual agreement of the Parties.

19.1 The present Agreement shall be deemed to be in force until the Genetic Material is returned to the satisfaction of the Provider upon completion of the Project. Regarding the Genetic Material related information, the present Agreement shall be subject to any associated rights, such as copyright or trade secrets.

19.2 When a Party to the present Agreement wants to terminate the Agreement prior to the completion of the Project, the Party shall give written notice [XX] months in advance.

20. . Other Provisions

As deemed necessary.

APPENDIX 7

Contact List

No.	Name	Position	Email
1.	Beero Tioti	Project Manager, PROP Project, Ministry of Fisheries & Marine Resources Development	beerot@mfmrd.gov.ki
2.	Kuureta Toaki	Monitoring and Evaluation Specialist, PROP Project, Ministry of Fisheries & Marine Resources Development	kuuretat@mfmrd.gov.ki
3.	Kobure Norman	Senior Licensing Officer Oceanic Fisheries Division Ministry of Fisheries & Marine Resources Development	koburen@mfmrd.gov.ki
4.	Kaon Tiamere	Officer in Charge Principal Fisheries Officer Oceanic Fisheries Division Ministry of Fisheries & Marine Resources Development	kaont@mfmrd.gov.ki
5.	Tereere Tioti	Director, Competent Authority/Kiribati Seafood Verification Authority, MFMRD	tereeret@mfmrd.gov.ki
6.	Tooreka Temari	Director, Coastal Fisheries Division, MFMRD	toorekat@mfmrd.gov.ki
7.	Tentaku Teataa	Procurement Officer PROP Project MFMRD	tentakut@mfmrd.gov.ki
8.	Bwakura Timeon	Gender Specialist PROP Project MFMRD	bwakurat@mfmrd.gov.ki

